PSC REF#:233828

Public Service Commission of Wisconsin
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**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Application Of Wisconsin Energy Corporation For Approval Of A Transaction By Which Wisconsin Energy Corporation Would Acquire All Of The Outstanding Common Stock Of Integrys Energy Group, Inc.	Docket No. 9400-YO-100

INITIAL POST-HEARING BRIEF OF THE WISCONSIN INDUSTRIAL ENERGY GROUP AND WISCONSIN PAPER COUNCIL

INTRODUCTION

Wisconsin's high cost of energy relative to states with which it competes for manufacturing jobs must be a concern for everyone in Wisconsin, particularly our utilities. Wisconsin does not simply have a manufacturing past; it has a significant manufacturing sector still today, with more than 9,400 manufacturers employing about 475,000 people across the state. The manufacturing future, though, may be diminishing, as energy costs continue to rise in the state. Wisconsin's average retail electric industrial rates today put Wisconsin manufacturers at a disadvantage to competitors operating in neighboring states with lower energy costs. The disadvantage is particularly acute for manufacturers that are customers of Wisconsin Electric Power Company ("WEPCO"), whose electric rates today are well above the average Wisconsin, Midwest, and US averages. Even if Wisconsin Energy Corporation ("WEC") was not looking to acquire Integrys Energy Group ("Integrys") (the "Transaction"), and WEPCO had no plans for any future capital projects and would not see any increases in O&M expenses or fuel costs—all unlikely events—WEPCO's rates will increase dramatically as the utility folds into rates what by the end of 2016 will be more than $500 million it holds in escrow. Ever-increasing industrial rates is putting at substantial risk the efforts that Wisconsin has made to restore our manufacturing sector.

It should come as no surprise, then, that WEC's interest in acquiring Integrys, whose subsidiary Wisconsin Public Service Corporation ("WPSC") has substantially lower industrial rates than WEPCO, is of great concern to manufacturers located in the service territories of both utilities. WPSC customers are concerned that the inevitable result of the Transaction will be rates that increase to match WEPCO's; and WEPCO customers are concerned that the Transaction will further increase the already excessive industrial rates. Unfortunately, WEC has made no effort to lessen industrial customers' reasonable concern that the Transaction is not in their best interests; to the contrary, WEC has further contributed to the concerns in its public statements and testimony and evidence in this proceeding: WEC has made clear to all that its motivation for the Transaction was not to produce certain benefits for utility consumers, and it has refused to identify, much less guarantee, any financial benefit for customers. At the same time, though, WEC <u>has</u> shown that the Transaction <u>will</u> produce tremendous financial benefits—billions of dollars—for shareholders.

The Wisconsin Industrial Energy Group ("WIEG") and Wisconsin Paper Council ("WPC") (together, "Industrial Customers) are participating in this proceeding because the Commission's decision will affect for years the rates paid by Industrial Customers' members who take service from one or more of the regulated utilities that are now wholly owned subsidiaries of WEC, Integrys, or both. The Transaction simply cannot be in their best interest given that WEC will not identify with any degree of specificity how utility consumers will benefit from the Transaction, the degree to which they are expected to benefit from the Transaction, and the period during which they will benefit from the Transaction.

In examining how the Transaction possibly could be in the best interests of utility consumers of each of WEC's regulated subsidiaries, particularly customers of WEPCO and WPSC, one cannot miss the vast chasm separating shareholders' certain and extraordinary financial benefits on the one hand, and utility consumers' unidentified and uncertain "benefits" on the other:

- **$503 million** still to be added to WEPCO's electric rates. WEPCO's retail industrial electric rates in 2014 were well in excess of WPSC's retail industrial electric rates, as well as both the Midwest and US average retail industrial electric rates. WEPCO utility consumers are rightly troubled by the very high electric rates that they are already paying, particularly when those rates do not yet include more than one-half billion dollars that WEPCO holds in escrow and will fold into future rates. (Direct-PSC-Kettle-4)
- **$474 million** exceeding Commission-authorized returns. While WEPCO's electric rates were growing for customers, extraordinary profits were growing for shareholders. Cumulatively, from 2001-2013, WEPCO exceeded Commission-authorized returns by $474 million. (Direct-PSC-O'Donnell-13; Direct-PSC-Kettle-8) That is $474 million on top of already robust authorized returns that are greater than the national average.
- **34% premium** over WPSC's rates. WPSC utility customers are rightly concerned that WPSC's comparatively lower electric rates will be at risk following the Transaction. WEPCO's retail industrial electric rates are on average 34% more than WPSC's retail industrial electric rates; and WEPCO's rates **grew by nearly 25% in the past five years** while WPSC's grew by only

4%. (Rebuttal-WIEG-Kollen-14) These customers recognize that even if the Commission prohibits WEC from merging WEPCO and WPSC to levelize rates between the two utilities, WPSC still will be controlled by WEC, which has successfully increased WEPCO's retail rates, to the detriment of customers, by nearly 25% in just five recent years.

- **$236 million** in Transaction costs. WEC's expected payments to investment bankers, lawyers and other service providers. (Direct-CUB-Hahn-27)
- **$2.4 billion** that WEC is paying Integrys shareholders, cumulatively, as a premium above Integrys' share value. (Direct-WEC-Lauber-4; Surrebuttal-WEC-Reed-9)
- **$0.00. Nothing** to utility consumers. WEC is not certain that utility consumers will see any benefit from the Transaction. It will not guarantee that utility consumers will ever benefit from the Transaction, and it refuses even to identify what it believes will be specific utility consumer benefits.

Regardless of why WEC has decided it needn't show why utility consumers will benefit from the Transaction, the answer is immaterial to this Commission's review of the Transaction. WEC apparently has concluded that it needn't offer substantive evidence of utility consumer benefits. Therefore, the Commission cannot approve the Transaction.

WEC has not met its burden to prove that the Transaction is in the best interests of Wisconsin's utility consumers and the public and, therefore it cannot approve the Transaction. This issue—has WEC met its burden to show that the "best interests" test is met—is the legal question now facing the Commission. But the more compelling question—the question that has not been answered and returns to us again and again—is this: why has WEC done so very little in Wisconsin to show any one of the intervenors the benefits of the Transaction. Can it be the case that the legal standard, in fact, demands nothing of an acquiring holding company? Because exactly nothing is what WEC has guaranteed utility consumers and the public. Or, perhaps, WEC has presented speculative future "benefits" for utility consumers and the public knowing that neither the intervenors nor the Commission—nor, indeed, anyone—can prove that WEC's unidentified and uncertain future "benefits" will not arrive. One of WEC's witnesses, its consultant John Reed, provided a glimpse at this strategy when he testified that "the exact nature and value of each benefit [of the Transaction] may be arguable . . . ." (Rebuttal-WEC-Reed-6) In short, WEC asks the Commission to approve the Transaction even though by its own testimony it does not know whether utility consumers and the public will ever benefit.

Should the Commission conclude that the Transaction as proposed is not in the best interests of utility consumers and the public, but that it could be if conditioned upon certain of those provisions suggested by one or more of the intervenors and Commission Staff[1], the Industrial Customers believe that such a decision could be reasonable. In other words, the Commission should conclude that WEC has not shown the Transaction to be in the "best interests of utility consumers, shareholders and the public." Nonetheless, the Commission could approve the Transaction with conditions necessary to protect utility consumers and the public from harm and ensure that they receive a certain, appropriate benefit. Although WEC has committed to some provisions protecting customers from harm,[2] they are not nearly strong enough to provide real protections. Moreover, WEC has not agreed to provide utility consumers and the public with any positive benefits. Industrial Customers urge the Commission to include with any approval of the Transaction the following, broadly stated, conditions:

[1] A list of proposed conditions is found in Ex.-WEC-Lauber-4.
[2] A list of the conditions to which WEC has agreed is found in Ex.-WEC-Lauber-10.

- WEC and all of its subsidiaries must be prevented from recovering from ratepayers all Transaction costs;
- WEC and all of its subsidiaries must be prevented from recovering from ratepayers all Transition costs until such time that specific savings directly related to a specific Transition cost has exceeded that cost;
- WEC must be prevented from consolidating its regulated utility subsidiaries for a period of at least five years, protecting customers of WPSC from the very high electric rates WEPCO customers now pay;
- Each of WEC's subsidiary regulated utilities must guarantee their customers financial benefits by
    - sharing with their respective customers one-half of revenues earned above the utilities' authorized return;
    - providing customers a defined benefit: for all but WEPCO's electric customers, the defined benefits should take the form of a bill credit; WEPCO's electric customers should be relieved of paying WEPCO's transmission escrow.

BACKGROUND

WEC is a holding company with several wholly owned subsidiaries including the regulated utilities WEPCO and Wisconsin Gas LLC ("Wisconsin Gas"). (Direct-WEC-Lauber-3) WEC, through subsidiaries WEPCO[3] and Wisconsin Gas, serve about 1.1 million electric and 1.1 million natural gas customers in Wisconsin and the Upper Peninsula of Michigan (the "Michigan UP"). (*Id.*) Although WEPCO's electric service customers are concentrated in southeast Wisconsin, its electric service territory includes portions of the Fox River Valley and

[3] WEPCO has retail electric operations, natural gas operations (as "WE-GO"), and steam operations (as "Valley Steam" and "Milwaukee County Steam"). *See*, *e.g.*, Final Decision, Joint Application of Wisconsin Electric Power Company and Wisconsin Gas, LLC, both d/b/a/ We Energies, for Authority to Adjust Electric, Natural Gas, and Steam Rates, PSC Docket No. 5-UR-106 (December 21, 2012), at 1.

the Michigan UP. WEPCO's retail industrial electric rates increased by nearly 25% to an average 8.22 cents per kilowatt hour (kWh)[4] over the five years ending in 2014. (Rebuttal-WIEG-Kollen-14) By comparison, in 2014 the US average was just over 6.5 cents per kWh and the Midwest average was less than 6.5 cents per kWh. (*Id.* at 15; Table: 2014 Average Industrial Rates). WEC also currently owns 26.24% of American Transmission Company LLC and its corporate manager, ATC Management, Inc. (together "ATC"). (Direct-WEC-Lauber-14)

Integrys is a holding company that wholly-owns and operates six regulated natural gas and electric utilities in four states.[5] (Direct-WEC-Schott-3) Its principal regulated subsidiary is Wisconsin Public Service Corporation ("WPSC"), through which it provides retail electric service to 445,000 customers and natural gas service to 323,000 customers in northeast and central Wisconsin and an adjacent portion of the Michigan UP. (*Id.* at 4.) WPSC's retail industrial electric rates in 2014 averaged 6.14 cents per kWh[6], less than both the US and Midwest averages. (Rebuttal-WIEG-Kollen-14) Over the same five year period WEPCO's retail industrial electric rates increased by nearly 25%, WPSC's retail industrial electric rates increased by just 4%. (*Id.*) Integrys also currently owns 34.07% of ATC. (Direct-WEC-Lauber—14)

On June 20, 2014, WEC announced Transaction—that agreement by which WEC would acquire Integrys for $9.1 billion with cash ($5.8 billion) and assumption of Integrys debt ($3.3

[4] Based on industrial loads (demands) of 50 megawatts ("MW") or more and annual consumption (energy) of 32,500 megawatt hours ("MWh"). (Rebuttal-WIEG-Kollen-14-15)
[5] Integrys also owns and operates non-regulated subsidiaries Integrys Business Support, LLC, Integrys Energy Services, Inc., and Trillium CNG. (Direct-WEC-Schott-3)
[6] Based, as is true of the comparable WEPCO rate discussed above, on industrial loads (demands) of 50 MW or more and annual consumption (energy) of 32,500 MWh. (Rebuttal-WIEG-Kollen-14-15)

billion). (Direct-WEC-Lauber-4) The $9.1 billion purchase price includes a 17.3% premium over Integrys' shares at the June 20, 2014, closing price and a 22.8% premium over the Integrys' shares 30-trading day moving average ending on June 20, 2014. (*Id.*) In other words, WEC's purchase price includes a premium for Integrys shareholders of $2.4 billion. (Surrebuttal-WEC-Reed-9)

Should WEC receive all necessary regulatory approvals and close on the Transaction, Integrys will become a WEC subsidiary (after which WEC will be renamed "WEC Energy Group, Inc.). The new WEC Energy Group will then be one of the largest utility holding companies in the country, with a combined rate base of about $17 billion, serving about 4.3 million customers across Wisconsin, Illinois, Michigan, and Minnesota. (Direct-WEC-Reed-5) It will control WEPCO, Wisconsin Gas, and WPSC in Wisconsin, Michigan Gas Utilities Corporation in Michigan, the Peoples Gas Light and Coke Company and the North Shore Gas Company in Illinois, and Minnesota Energy Resources Corporation in Minnesota. (Direct-WEC-Reed-4) The WEC Energy Group will also have a 60.31% ownership interest in ATC. (*Id.*)

ARGUMENT

WEC is a public utility holding company under Wis. Stat. § 196.795, which regulates corporate owners of regulated utilities. A holding company includes any company that owns, controls or holds 5% or more of the outstanding voting securities of a public utility with the unconditional power to vote such securities. *See* Wis. Stat. §196.795(h)1.a. The Commission directly regulates WEC subsidiaries WEPCO and Wisconsin Gas, but the circumstances under which the Commission regulates WEC itself are limited. WEC triggered one of those limited circumstances with its proposed acquisition of Integrys. Like WEC, Integrys is a public utility holding company under Wisconsin law because it owns 5% or more of a Wisconsin public utility, WPSC. Wis. Stat. §196.795(3) **Takeovers** requires Commission approval for a person (here, WEC) to acquire more than 10% of the outstanding voting securities of a holding company (here, Integrys). **Specifically, WEC may not acquire Integrys "unless the commission has determined, after investigation and an opportunity for hearing, that the … acquiring is in the best interests of utility consumers, investors and the public." Wis. Stat. §196.795(3).**

WEC acknowledges this statutory requirement; and all parties agree that approval of the acquisition requires that the Commission find that the acquisition "is in the best interests of utility consumers, investors and the public." WEC's principle witness on the question of "best interests," Mr. Reed, discussed at substantial length what he believed the standard required. His opinion on whether WEC has met the "best interests" standard should be given no weight, though, as he does not understand that standard. Of course Mr. Reed is not offering a legal analysis of the standard. However, his opinion that WEC met the "best interests" standards rests on his faulty reading of the legal standard. He testified that WEC had met the necessary standard even though he believed that the standard did not demand utility consumer benefits. He wrongly believed that all that was required was that the Transaction "should not cause harm in terms of service, costs, environmental protection, safety and economic impacts." (Rebuttal-WEC-Reed-6) He also believed that WEC did not need to show that the Transaction was in the best interests of each of the three groups independently (*i.e.,* in the best interests of the utility consumers; in the best interests of the investors; and in the best interests of the public) but instead that the acquisition was in the best interests of all three groups taken together. Thus, at the time he opined that WEC met the standard, his test was a standard that does not exist and is much less onerous than the actual standard. Certainly if "best interests" is to have any meaning, the standard demands that "utility consumers" and the "public" receive some benefit from the Transaction. "They must be more than indifferent to WEC's proposal." (Direct-WIEG-Kollen-4).

A. WEC Has Failed To Show That The Transaction Is In The Best Interests Of "Utility Consumers, Shareholders, And The Public"

WEC is alone in believing that it is unnecessary to analyze how this Transaction, if approved, will affect utility consumers, shareholders and the public. It has very clearly stated that it has not undertaken any quantitative analysis—or synergy study—of the benefit the Transaction will have on customers. "Unprecedented" says outside consultant Kevin O'Donnell, testifying on behalf of PSC Staff. (Direct-PSC-O'Donnell-10). "[I]t is difficult to imagine that any business, particularly one the size of WEC, would even consider acquiring another business without [ ] an analysis." (Direct-WIEG-Kollen-5) The value of a synergy study cannot be overstated:

> First, [a synergy study] demonstrates that the acquiring holding company or utility has a plan to integrate the management and operations of the utilities and other affiliates. Second, the plan provides a framework or a roadmap for implementation that can be reviewed by regulators and other parties prior to approval and consummation. Third, the plan can be used by regulators and other parties to assess the holding company's and utility's performance after consummation. Fourth, the plan provides a reasonable estimate of the costs that will be incurred and the savings that may be achieved.

(Rebuttal-WIEG-Kollen-6) The absence of such a study leaves the Commission and intervenors at a disadvantage because there is no substantive evidence by which one can determine with clear, quantifiable terms, whether the benefits the regulated utilities may assert are from the Transaction outweigh the costs of the transaction. (Direct-PSC-O'Donnell-10) The estimates of benefits presented by Mr. Reed are merely forecasts and are not analysis of likely actual savings. And even then WEC will not guarantee that the benefits will ever materialize.

B. THE COMMISSION MAY NOT APPROVE THE TRANSACTION WITHOUT INCLUDING IN ITS ORDER CONDITIONS THAT WILL PROTECT UTILITY CONSUMERS FROM HARMS ARISING OUT OF THE TRANSACTION.

WEC must prove that the Transaction will not harm utility consumers. This showing is necessary (although not sufficient) for this Commission's approval of the Transaction. Even Mr. Reed, whose working understanding of "best interests" is mistaken, acknowledges that for the Commission to approve the Transaction, it must find that the Transaction may "not cause harm in terms of service, costs, environmental protection, safety and economic impacts." (Rebuttal-WEC-Reed-5)

WEC has identified two types of economic impacts that are tied to the Transaction: transaction costs and transition costs. It has stated that it will not pass any transaction costs to utility consumers and that utility consumers will pay transition costs only to the extent that transition expenditures provide ratepayer benefits.

In theory, WEC's approach could provide utility consumers with many of the protections they must have to be held harmless. But WEC's Transaction, if approved, will no longer be theoretical. The Transaction will present Commission staff and utility consumers, and ultimately the Commission itself, with practical difficulties—first identifying for each regulated utility those expenses each seeks to recover from ratepayers that are actually transaction- or transition-related costs and then, for many years to come, tracing those costs from the regulated utility to sister companies and/or its parent, WEC. The definitions that WEC has provided for both transaction costs and transition costs are too open for interpretation to provide meaningful protection. Moreover, the nexus between WEC-identified transition costs and resulting savings layers further complexity to the practical application of WEC's proposal.

<u>Industrial Groups' Proposed Conditions Protecting Utility Consumers From Harm</u>

The Commission should adopt the following conditions, as well as those proposed by intervenors and staff.

1. WEC/WEG and its affiliates, including WEPCO and WPSC, shall hold harmless ratepayers from any and all risks resulting from and costs incurred in conjunction with or caused by the transaction. This includes the acquisition premium costs, regardless of which entity or the manner in which the costs are recorded; the transaction costs, regardless of where or the manner in which the costs are recorded or when they are recorded; the transition costs that are incurred to integrate the systems and operations of WEC and Integrys and all of their affiliates, including WEPCO and WPSC, as well as the transition costs incurred to achieve savings; and all hidden costs, including increases in financing costs and loss of tax benefits.

2. WEC/WEG and Integrys shall retain all acquisition premium and transaction costs on their accounting books and shall not "push-down" these costs onto the WEB, WEPCO or WPSC accounting books.

3. WEG, WEPCO, and WPSC shall not seek ratemaking recovery of, seek authority to defer, or defer on their accounting books any transition costs (capital or expense) incurred to integrate WEC and Integrys and their affiliates, any transition costs (capital or expense) incurred to achieve savings, or any other costs caused by or due to the acquisition, unless specifically authorized in this proceeding.

4. WEC/WEG and its affiliates, including WEPCO and WPSC, shall separately identify on their accounting books all acquisition premium costs, if any; transaction costs, if any; transition costs (capital and expense); and

all other costs caused by the acquisition on their accounting books and WEPCO and WPSC shall remove these costs, as well as any amounts assigned or allocated from WEB, from the per books amounts through *proforma* adjustments in their rate filings.

5. WEC/WEG and its affiliates, including WEPCO and WPSC, shall extend the *benefit* to WEPCO and WPSC customers of any concession or condition imposed by another regulator resulting in a benefit or benefits to a utility and/or its customers in a federal jurisdiction and/or a non-Wisconsin state jurisdiction.

6. WEC/WEG and its affiliates, including WEPCO and WPSC, shall hold WEPCO and WPSC customers harmless from the effects of any conditions that are imposed by the FERC, Federal Communications Commission ("FCC"), Michigan Public Utilities Commission ("MPUC"), Illinois Commerce Commission ("ICC"), Minnesota Department of Commerce ("MDOC"), and any other regulatory entities with jurisdiction over the transaction.

7. WEC/WEG and its affiliates, including WEPCO and WPSC, shall not propose any levelization or subsidization of rates between WEPCO and WPSC or propose a merger between WEPCO and WPSC that will or may result in any levelization or subsidization of rates between WEPCO and WPSC for at least five years after the consummation of the transaction.

WEC has committed not to recover Transaction Costs from utility consumers. (Direct-WEC-Lauber-7) Transaction Costs will instead be paid by shareholders. (*Id.*) While this early commitment is welcome (it does reduce the number of potentially disputed issues), it is not a utility consumer benefit and cannot be considered such. First, the Transaction Costs would not exist absent WEC's pursuit of the Transaction. Second, WEC's commitment is necessary because the Transaction "is *not* motivated by a desire to consolidate operations and rapidly achieve large cost savings." (Direct-WEC-Lauber-5 (emphasis supplied by Mr. Lauber)) WEC is not pursuing the Transaction with the intent to reduce utility consumer rates. (*Id.* at 7)

Who decides what types of expenses are Transaction costs; who decides whether a particular expense is a Transaction cost? Because WEC wants to recover Transition costs through its regulated utility subsidiaries, it will have an undeniable financial incentive to identify costs as Transition costs. Transaction costs: no recovery. Transition costs: recovery (as proposed by WEC). Some transaction costs will be undeniable. They are "[t]he costs to execute the Transaction." (Direct-WEC-Lauber-7). Costs for the bankers, and lawyers, and securing debt financing (*Id*.), and "to obtain the regulatory and shareholder approvals required to consummate the proposed Transaction." (Rebuttal-WEC-Reed-17-18).

Should the Commission decide that it will allow deferrals, the following safeguards should be included:

- Utilities agree to cooperate in future rate cases in providing information requested by parties to determine if a cost was due to or caused by acquisition whether they identified it as transition cost or not.

- Utilities retain burden of proof on transition costs and must demonstrate unequivocally that a cost identified by another party as a potential transition cost was not due to or caused by the acquisition, i.e., that it would have been incurred regardless of acquisition.

- Utilities retain burden of proof on claimed savings and must demonstrate unequivocally that it would have incurred the cost that was avoided (saved) but for the acquisition. Utilities must provide all support for claimed savings in each subsequent rate case.

- Utilities are not allowed to add "savings" to cost of service for revenue purposes.

C. THE COMMISSION MAY NOT APPROVE THE ACQUISITION WITHOUT CONDITIONS THAT GUARANTEE THAT UTILITY CONSUMERS BENEFIT.

In addition to the protections the above conditions would provide, WEC must provide customers a positive benefit. WEC has relied exclusively on merger experiences from other jurisdictions as evidence that consumers will see some benefit in the future. Many of these other jurisdictions have required the merging utilities to provide immediate and certain financial benefits with approvals. This Commission should do so as well.

The Commission must find that the acquisition is in the utility consumers best interest. WEC "proves" that the Transaction is in its customers best interest without any certainty at all. No guarantees. It defies explanation how the Commission could find that the Acquisition will be in the best interests of consumers when WEC refuses to guarantee that the consumers will benefit.

1. Although It Is Unwilling To Ensure That Its Wisconsin Customers Benefit From The Acquisition, WEC Has Guaranteed Substantial Benefits To Customers In Neighboring States.

WEC must obtain regulatory approvals in Michigan, Illinois and Minnesota. Minnesota will not take action on the proposed Transaction until Michigan, Illinois and Wisconsin have made their respective decisions. While it is understood that Minnesota is looking to include a most-favored nation clause, it is too soon to know what WEC may guarantee regulators in the state. Michigan and Illinois, though, have secured benefits for both utility consumers and the public. Among the benefits that **Michigan** has secured for its residents is the end of SSR payments, WEPCO's agreement that it will refund to Michigan utility customers all future SSR payments that they are obligated to make under MISO tariffs, a capital contribution to new generation to service its largest customers after 2020 (the Tilden Mining Company and Empire Iron Mining Partnership (together, the "Mines")) and, in the intervening years, a special contract with those Mines. **Illinois** secured from WEC a rate freeze and agreement to maintain current levels of its Illinois employees.

2. WEC and Integrys Shareholders, Utility Executives, Bankers and Lawyers and Others Are Certain To Receive Substantial Financial Benefits.

WEC has substantial defined benefits for others as well. Twelve Integrys Executives will receive an estimated $47.6 million in change-in-control payments (also known as "golden parachutes") (Direct-PSC-Bartels-7, 10; Ex.-PSC-Hubert-5: Public Comment of James Deniston). Integrys shareholders will receive a $2.4 billion premium for their shares (amounts that are between 17% and nearly 23% greater than Integrys shares were valued the day WEC announced the proposed Transaction). (Direct-WEC-Reed-4; Surrebuttal-WEC-Reed-9) WEC will buy each share of Integrys stock for $18.58 and 1.128 shares of WEC. (*Id.*) WEC shareholders (now including those who had been Integrys shareholders) will share in the income, potential gain and cash flow that will come from WEC's 60% ownership interest in ATC. (Direct-PSC-Hubert-24; Direct-GLU-Lowry-8; Direct-CUB-Hahn-12, 16c) and WEC's projected increase in earnings (Direct-CUB-Hahn-17-18) and increase in growth rate. (Direct-PSC-O'Donnell-8) Finally, and as noted earlier, bankers, lawyers and other services WEC employs to consummate the Transaction will cost as much as $236 million. (Direct-CUB-Hahn-27)

3. The Commission Can Best Ensure That The Transaction Is In Utility Consumer's Best Interests By Conditioning Its Approval On WEC's Regulated Utilities Sharing With Its Customers Those Revenues That Exceed Their Respective Authorized Returns.

The Commission should adopt an earnings mechanism whereby the revenue requirement effect of earnings in excess of the authorized return on equity for WEPCO and WPSC are refunded to customers for four years after the consummation of the proposed transaction. (Direct-WIEG-Kollen-22) The actual earnings should be used as the starting point and reflect all ratemaking adjustments previously approved by the Commission as well as all adjustments necessary to remove the costs due to or caused by the acquisition. (*Id.*) The actual earnings for this purpose also should reflect adjustments necessary to remove the effects of any refunds due to this mechanism. (*Id.*)

The savings, quantified each year in this manner, should be deferred and then amortized over the next twelve month period as a rate reduction in the form of a surcredit rider. WEPCO and WPSC should make annual filings with the Commission to provide the calculation of its deferrals and the surcredit. Such an approach will provide timely rate reductions and ensure that the transaction is in the "best interests" of utility consumers and the public. (*Id.*)

4. In The Alternative, The Commission Must Condition An Approval On Certain Defined Benefits For Consumers of Each Regulated Utility.

Staff witnesses O'Donnell and Larson testified as to reasonable up-front payments for customers of the regulated utilities which Mr. O'Donnell found to be common practice throughout the country. Since 2004, state regulators have approved mergers of investor-owned utilities at least 67 times, with most conditioning approval on monetary savings being passed on to consumers. (Direct-PSC-O'Donnell-18) The monetary savings took several forms including consumer bill credits, rate freezes, and rate base or operating expense offsets. (*Id.*) In 45 of these cases, approval rested on upfront rate credits, rate freezes, rate base write-offs, or operating expense write-offs. (*Id.*) The amount of upfront rate credits necessarily differed from jurisdiction to jurisdiction and merger-to-merger, as the circumstances of each differed.

One can extrapolate a reasonable bill credit by examining the size of this Acquisition relative to the size of those other recently approved mergers. (*Id.*) In 28 of the cases, Mr. O'Donnell calculated respective rate credits as a percent of non-fuel/non-purchased O&M expenses. (Direct-PSC-O'Donnell-23) Unlike fuel and purchased power expenses, which largely are passed on to consumers and will not be affected to any significant extent by a merger absent shared resources, non-fuel/non-purchased O&M expenses are precisely the types of costs that one would anticipate would be reduced through a merger. (*Id.* at 24) These are the expenses that a merged company would be expected to trim to obtain "synergy savings." (*Id.*) WEC witness Reed also sees synergy savings as a percent of non-fuel O&M expenses.

While there a number of bill credits that Mr. O'Donnell found to be ten percent or greater than non-fuel/non-purchased O&M costs, he acknowledged that most were somewhat less than 5 percent. (Direct-PSC-O'Donnell-26) The results of his analysis are shown in his Chart 5 at Direct-PSC-O'Donnell-27. With most under 5 percent, Mr. O'Donnell suggested that a range of between 2 and 4 percent would be reasonable. (*Id.*)

a. <u>The Commission Should Reduce WEPCO's Transmission Escrow to zero.</u>

While Mr. Larson concluded that a bill credit would be reasonable for several of the regulated utilities (discussed further below), he believed that it was too little for WEPCO's electric operations. (Direct-PSC-Larson-4) He explained that "for WEPCO, bill credits are not the best method, due to its existing balances of deferred costs" that will total $503 million by the end of 2016. (*Id.*) And he believed that there were several reasons why the Commission might require WEPCO to write off a higher amount of regulatory assets than the $50 million high end that Mr. O'Donnell had calculated for the utility:

- Mr. O'Donnell's calculation of the 2 to 4 percent first year ratepayer credits required by other state commissions exclude operating expense and write-offs and rate base write-offs that are similar to the write-off of deferred costs I identified. If those other states' write-offs were included in Mr. O'Donnell's calculation, the range of first year ratepayer credits would be higher than 2 to 4 percent.
- WEPCO's earned return on equity (ROE) has exceeded its authorized ROE over the period that these deferral have been building.
- WEPCO's authorized ROE exceeds the national average.

(Direct-PSC-Larson-4) By the end of 2016, WEPCO will have $353 in deferred transmission costs to bring into rates should the Commission not condition an Approval on writing off these escrowed amounts. WEPCO will have another $150 million in other deferred costs then as well.

b. The Commission Should Provide Customers of Certain Regulated Utilities A Bill Credit Equal To 4 percent of the respective utilties' non-fuel/non-purchased O&M expense.

Because WEC has itself made no reasonable efforts as to synergy savings, the Commission should accept that a reasonable credit for consumers should be based on the high end of the range, at 4 percent. A 4 percent credit would go to Wisconsin consumers of the four remaining regulated Wisconsin utilities. Wisconsin Gas: $4.2 million; WEGO: $2.5 million; VA Steam: $679,000; MC Steam: $502,000. (Direct-PSC-O'Donnell-29 and Table 1).

CONCLUSION

The Industrial Customers respectfully request that the Commission take those actions identified at the outset of this Initial Brief and as supported above.

Respectfully submitted this 30th day of March 2015.

HEINZEN LAW, S.C.

By: *s/ Steven A. Heinzen*
Steven A. Heinzen
Attorney for Wisconsin Industrial Energy Group

Heinzen Law, S.C.
2 East Mifflin Street, Suite 402
Madison, WI 53703
608-209-7468
steve.heinzen@heinzenlaw.com